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14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN FRANCISCO DIVISION

17 GOOGLE LLC,

18 Plaintiff,

19 vs.

20 SONOS, INC.,

21 Defendant.

Case No. 3:20-cv-06754-WHA
Related to Case No. 3:21-cv-07559-WHA

**APPOINTMENT OF COMMISSIONERS
UNDER THE HAGUE CONVENTION AND
REQUEST FOR JUDICIAL ASSISTANCE**

Referral: Hon. Donna M. Ryu, USMJ

**APPOINTMENT OF COMMISSIONERS UNDER THE HAGUE CONVENTION
AND REQUEST FOR JUDICIAL ASSISTANCE – RENEWAL OF PERMISSION TO
TAKE EVIDENCE BY A COMMISSIONER UNDER ARTICLE 17 HAGUE EVIDENCE
CONVENTION 1970 TO THE FEDERAL OFFICE OF JUSTICE (FOJ), CENTRAL
AUTHORITY FOR THE REQUEST FOR JUDICIAL ASSISTANCE IN CIVIL AND
COMMERCIAL MATTERS:**

The United States District Court for the Northern District of California, located at the Oakland Courthouse, Courtroom 4 – 3rd Floor, 1301 Clay Street, Oakland, CA 94612, presents its compliments to the Federal Office of Justice and has the honor of requesting its assistance in obtaining evidence to be used in a civil proceeding now pending before this Court in the above-captioned matter, specifically by permitting commissioners appointed by this Court to take evidence under Article 17 of the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters (“Hague Convention”).

Mr. Janos Levai, whose professional address is: Brandschenkestrasse 110, 8002 Zürich, Switzerland, was previously deposed by permission of the Federal Office of Justice in May 2022. However, because this Court recently permitted certain amendments to the scope of Google’s Invalidity Contentions, it appears to this Court that Mr. Levai has additional testimony relevant to this action. It is necessary for the purposes of justice and for the due determination of the matters in question between the parties that Mr. Levai be examined (remotely) again at the Swiss offices of Quinn Emanuel at Dufourstrasse 29, 8008 Zurich, Switzerland or another nearby office if additional space is required, under oath or affirmation. This Court, therefore, respectfully requests your assistance pursuant to the Hague Convention in obtaining additional oral deposition testimony of Mr. Janos Levai under the terms set forth in this Letter of Renewed Request:

I. SUMMARY OF ACTION

1. The above-captioned actions are properly under the jurisdiction of and are now pending before the United States District Court for the Northern District of California, Oakland Courthouse, Courtroom 4 – 3rd Floor, 1301 Clay Street, Oakland, CA 94612, United States of America. The United States District Court for the Northern District of California is fully sanctioned

1 as a court of law and equity and is authorized by Rule 28(b) of the Federal Rules of Civil Procedure
 2 to direct the taking of evidence abroad by Letters of Request.

3 2. The parties to the civil action pending in the United States District Court for the
 4 Northern District of California are as follows:

5 a. Google LLC (hereinafter, “Google”) is a corporation organized and existing under
 6 the laws of the State of Delaware, with its headquarters in California, USA. Witness
 7 Janos Levai is an individual who is employed by Google as a Software Engineer but
 8 is a resident of Switzerland. Google is represented by QUINN EMANUEL
 9 URQUHART & SULLIVAN, LLP, 50 California Street, 22nd Floor, San Francisco,
 10 CA 94111, USA.

11 Correspondence to Google can be faxed to its representatives at +1 (415) 875-6700
 12 or emailed at the following email addresses: charlesverhoeven@quinnemanuel.com,
 13 melissabaily@quinnemanuel.com, jamesjudah@quinnemanuel.com,
 14 marckaplan@quinnemanuel.com, and ge-sonos3@quinnemanuel.com.

15 b. Sonos, Inc. (hereinafter “Sonos”) is a corporation organized and existing under the
 16 laws of Delaware, with headquarters in California, USA. Plaintiffs are represented
 17 by ORRICK, HERRINGTON & SUTCLIFFE LLP, The Orrick Building, 405
 18 Howard Street, San Francisco, CA 94105; and LEE SULLIVAN SHEA & SMITH
 19 LLP, 656 W. Randolph Street, Floor 5W, Chicago, IL 60661, USA.

20 Correspondence to Sonos can be faxed to its representatives at +1 (415) 773-5759
 21 and +1 (312) 754-9603 or emailed at the following email addresses:
 22 smith@ls3ip.com, boyea@ls3ip.com, sullivan@ls3ip.com, and Sonos-NDCA-
 23 06754-service@orrick.com.

24 3. These above-captioned actions are two cases regarding speaker technology that have
 25 been related by the Court. Sonos has sued Google for infringement of U.S. Patent Nos. 9,967,615
 26 (“the ’615 patent”); 10,779,033 (“the ’033 patent”); 10,469,966 (“the ’966 patent”); and 10,848,885
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1 (“the ’885 patent”) (collectively, the “Patents-in-Suit”) under the patent laws of the United States,
2 35 U.S.C. § 1 *et. seq.* Google filed a declaratory judgment action for non-infringement of the
3 Patents-in-Suit under the Declaratory Judgment Act, 8 U.S.C. § 2201 and the patent laws of the
4 United States, 35 U.S.C. §§ 1-390, as well as claims against Sonos for breach of contract and
5 conversion. Both Sonos and Google believe all respective claims against them should be dismissed.
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7 4. The Court recently granted Sonos permission to depose Mr. Janos Levai again. The
8 parties have agreed to conduct a remote deposition of Mr. Janos Levai, who will be located for such
9 deposition in Switzerland, in accordance with Chapter II of the Hague Convention.

10 **II. EVIDENCE REQUESTED**

11 5. The parties have satisfied this Court that Mr. Janos Levai has material information
12 related to this pending action for use at trial, and that justice cannot be completely done between the
13 parties without his testimony.
14

15 6. The parties requested that this Court issue the present Letter of Renewed Request
16 seeking your assistance in obtaining testimony from Mr. Janos Levai. The evidence to be obtained
17 is oral testimony to be taken in Switzerland, and is intended to be used as evidence in the trial for
18 this matter. Mr. Janos Levai, who is a resident of Switzerland, has been apprised of his rights under
19 Swiss law and has consented to being deposed in Switzerland.
20

21 7. The Court requests assistance in permitting the commissioners appointed by this
22 Court to take testimony from Mr. Janos Levai, which will be given voluntarily. The topics of
23 examination will be limited to Mr. Janos Levai’s knowledge reasonably related to the YouTube
24 Remote’s “party mode” feature.

25 8. This Court is satisfied that the testimonial evidence is relevant to the pending
26 proceeding and is likely to be used at trial to assist this Court in resolving the dispute presented in
27 the civil action before it. With the approval of this Court, the parties and this Court therefore seek
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1 permission to have commissioners take this testimonial evidence for the purpose of using such
2 evidence at trial.

3 9. It is requested that the testimonial evidence be given in the English language, and on
4 oath or affirmation. It is also hereby requested that the testimony be in the form of a recorded remote
5 deposition testimony via a secure session using videoconferencing technology upon questions
6 communicated to the witness by U.S. counsel of the parties, acting as commissioners. It is requested
7 that the testimonial evidence be given at some time agreeable to all involved in January 2023.
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9 10. The parties have agreed on and the Court hereby appoints Mr. Olivier Buff to serve
10 as commissioner (“the Swiss Commissioner”). Mr. Buff is a lawyer with the law firm Quinn
11 Emanuel at Dufourstrasse 29, 8008 Zürich, Switzerland, and admitted to practice as an attorney in
12 Switzerland and New York. In his capacity as commissioner, Mr. Olivier Buff will complete and
13 oversee the following tasks: liaise with the Swiss authorities; act as an agent of service for any
14 communication of the Swiss authorities to this Court, the parties and Mr. Janos Levai; invite Mr.
15 Janos Levai to the deposition once authorization is granted; verify and confirm the identity of Mr.
16 Janos Levai before testimonial evidence is taken; supervise the testimony of Mr. Janos Levai by
17 remote videoconferencing software from the Swiss offices of Quinn Emanuel at Dufourstrasse 29,
18 8008 Zürich, Switzerland (or another nearby office if additional space is required); instruct the
19 witness on his rights and obligations as per Article 21 of the Hague Convention; and ensure that the
20 testimony is conducted in accordance with those rights and obligations.
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23 11. The U.S. counsel of the parties, which the Court upon request of the parties hereby
24 also appoints as commissioners are the following:

- 25 a. For Google: Nima Hefazi and James Judah, from QUINN EMANUEL URQUHART
26 & SULLIVAN LLP at 50 California, 22nd Floor, San Francisco, CA 94111, USA
27 and 865 S. Figueroa Avenue, 10th Floor, Los Angeles, CA 90017, USA.
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1 b. For Sonos: Dan Smith, Michael Boyea, and Sean Sullivan from LEE SULLIVAN
2 SHEA & SMITH LLP at 656 W. Randolph Street, Suite 5W, Chicago, IL 60661.

3 12. In addition to the U.S. counsel and commissioners listed above and of the Swiss
4 Commissioner, it is also requested that client representatives for each party be allowed to be present,
5 and that a videographer and a stenographer be present to take and record a verbatim transcript of all
6 testimony and proceedings in the English language and that the transcript of the testimony be
7 authenticated. When necessary, persons belonging to the information technology departments of
8 the law firms of U.S. counsel may enter the rooms where U.S. counsel are remotely attending the
9 deposition. U.S. counsel, the party representatives, the videographer, and the stenographer may
10 attend the deposition remotely. The Swiss Commissioner, Mr. Janos Levai and potentially any of
11 the appointed other commissioners will attend the deposition by videoconference from the same
12 location in Zürich. When necessary, persons belonging to the IT department of the Quinn Emanuel
13 law firm where the deposition is held may enter the room where Mr. Janos Levai is remotely
14 attending the deposition.
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17 13. As mentioned, it is requested that the commissioners take Mr. Janos Levai testimony
18 in the English language (to which Mr. Levai has agreed) under oath or affirmation, and that the
19 Swiss Commissioner be allowed to administer such oath or request for affirmation on Mr. Janos
20 Levai in accordance with United States law, as follows: “Do you swear or affirm that the testimony
21 you are about to provide is the truth, the whole truth, and nothing but the truth?”
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23 14. It is also requested that after giving testimony, Mr. Janos Levai be allowed after
24 completion of the transcript to review, submit any errata, and sign the transcript of his testimony,
25 and that the signed, transcribed, and videotaped testimony together with any documents marked as
26 exhibits be transmitted to the parties’ U.S. counsel as soon as possible thereafter.
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1 15. Accordingly, it is hereby requested that you grant assistance and authorize the Swiss
2 and U.S. commissioners appointed above to question Mr. Janos Levai under oath or affirmation at
3 the remote deposition at a date that works for all involved in January 2023, or at another time
4 determined by you, and that a verbatim transcript and videotape be prepared and be transmitted to
5 the parties' U.S. counsel for submission and use before this Court.
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7 16. It is also requested that you inform the Swiss Commissioner, this Court, and the
8 parties through their above-mentioned U.S. counsel of your approval of this Court's request and of
9 all relevant dates and times determined by you for the production of the aforementioned requested
10 testimonial evidence of Mr. Janos Levai. This Court and U.S. counsel hereby appoint Mr. Olivier
11 Buff to act as the agent of service in Switzerland for any and all communication from you in this
12 respect. As mentioned above, Mr. Olivier Buff's professional address in Switzerland for purpose of
13 your communications is: Dufourstrasse 29, 8008 Zurich, Switzerland.
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15 17. This Court expresses its appreciation to the Federal Office of Justice for its courtesy
16 and assistance in this matter and states that this Court shall be ready and willing to assist the courts
17 of Switzerland in a similar manner when required. This Court is also willing to reimburse (through
18 the Parties) the competent judicial authorities of Switzerland for any costs incurred in executing this
19 request for judicial assistance. This Court extends to the competent judicial authorities of
20 Switzerland the assurances of its highest consideration.
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22 This Letter of Renewed Request is signed and sealed by Order of the Court made on the date
23 set forth below:
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25 **SO ORDERED.**
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1 DATED: _____

2 HON. DONNA M. RYU
3 United States Magistrate Judge
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